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09/650, 134 08/29/00 HAGE

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IM52/0618

EXAMINER

REF ID: G
ART UNIT PAPER NUMBER1751
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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/650,134

Applicant(s)

Hage et al

Examiner

Greg Del Cotto

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on _____

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle 1035 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-21 is/are pending in the application

4a) Of the above, claim(s) _____ is/are withdrawn from consideration

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-21 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892)

18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4, 6, 7

20) Other: _____

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DETAILED ACTION

1. Claims 1-21 are pending.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 17 provides for the use of an organic substance which forms a complex with a transition metal, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 17 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor

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and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 909,809.

‘809 teaches a bleach and oxidation catalyst comprising a catalytically active iron complex including a defined pentadentate nitrogen containing ligand. See Abstract. Note that, with respect to instant claims 7-9, ‘809 teaches complexes having the same general formula as recited by instant claims 7-9. The most preferred ligands are N,N-bis(pyridin-2-yl-methyl)-1,1-bis(pyridin-2-yl)-1-aminoethane (MeN4Py). See page 4, lines 35-40. The peroxy bleaching compound used in the composition is a compound such as sodium perborate monohydrate, sodium perborate monohydrate, etc. and these compounds may be used in amounts from 5% to 35% by weight. See page 5, lines 15-28. Note that, with respect to instant claims 9-12, the Examiner asserts that these are product-by-process claims and that if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fec. Cir. 1985). See MPEP 2113.

Specifically, ‘809 teaches the bleaching activity of the Fe(MeN4Py) catalyst in the presence of a detergent on standard tea-stained cotton test cloths wherein the detergent contained the following ingredients and was dosed in water: 0.60 g/l sodium linear alkylbenzene sulphonate, 0.36 g/l sodium triphosphate, 0.44 g/l sodium carbonate, 0.20 g/l sodium disilicate, 0.67 g/l

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sodium sulphate, 0.20 g/l sodium perborate monohydrate, 0.06 g/l tetraacetylethylene diamine, less than 0.01 g/l Fe(MeN₄Py), and 0.19 enzymes, fluoreser, SCMC, minors, moisture. This bleaching composition has a pH of around 10. See page 10, lines 1-25. Note that, the Examiner maintains that the complex taught by '809 would inherently catalyse bleaching of the stains by atmospheric oxygen because '809 teaches the same bleach catalyst complex as recited by the instant claims. Note that, "substantially devoid" as recited by instant claims 1, 13, 17 and 18 allows for large amounts of a bleaching agent as outlined in the instant specification.

Accordingly, the broad teachings of '809 appear to anticipate the material limitations of the instant claims.

9. Claims 1, 4, 6, 9-13, and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 95/34628, WO 97/48787 or WO 97/38074.

'628 teaches a bleach and oxidation catalyst comprising a catalytically active iron complex. See Abstract. The Fe-complex catalyst may be used in a bleaching system comprising a peroxy compound or a precursor thereof and is suitable for use in the washing and bleaching of substrates including laundry, dishwashing and hard surface cleaning. See page 4, lines 5-13. Note that, with respect to instant claims 7-9, '809 teaches complexes having the same general formula as recited by instant claims 7-9. See page 3, lines 6-36. The catalyst may be used in bleaching compositions containing a peroxy-bleaching compound which is capable yielding hydrogen peroxide in aqueous solution. The amount of the peroxy bleaching compound used in the composition is generally in the amount from 5% to 35% by weight. See page 7, lines 19-36. The

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detergent bleach compositions may also contain a surfactant material and a detergent builder.

Detergent bleach compositions are effective over a wide pH-range of between 7 and 13. See page 6, line 35 to page 7, line 17.

Specifically, '628 teaches the preparation of $\text{Fe}(\text{N4Py})(\text{CH}_3\text{CN})(\text{ClO}_4)_2$ wherein the bleaching activity of the Fe-catalyst was demonstrated in the presence of hydrogen peroxide on standard tea-stained cotton test cloths. The experiments were carried out at a pH of 6 to 8 in a glass beaker in a solution of hydrogen peroxide and the Fe-catalyst. See page 17, lines 18-25. Note that, the Examiner maintains that the complex taught by '628 would inherently catalyse bleaching of the stains by atmospheric oxygen because '628 teaches the same bleach catalyst complex as recited by the instant claims. Note that, "substantially devoid" as recited by instant claims 1, 13, 17 and 18 allows for large amounts of a bleaching agent as outlined in the instant specification.

'787 a bleach and oxidation catalyst comprising a catalytically active metal complex having a poly-dentate ligand containing at least 6 hetero atoms. Such metal complexes can activate hydrogen peroxide, peroxy acids, or **molecular oxygen** and have both favorable stain removal and remarkable dye transfer inhibition properties. See Abstract. Additionally, '787 teaches that the catalyst may be used in detergent formulations using molecular oxygen as the oxidant. See page 4, lines 5-10. Note that, the Examiner asserts that bleaching using molecular oxygen as taught by '787 would be the same as atmospheric oxygen as recited by the instant claims. The metal catalyst may be used in laundry, dishwashing and hard surface cleaning. See

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page 4, lines 10-15. Detergent compositions have a pH range of between 6 and 13. See page 8, lines 10-12. Additionally, the compositions may contain surfactants and detergent builders. See page 12, line 10 to page 14, line 30.

Specifically, '787 teaches the preparation of $\text{Fe}(\text{N4Py})(\text{CH}_3\text{CN})(\text{ClO}_4)_2$ wherein the bleaching activity of the Fe-catalyst was demonstrated in the presence of hydrogen peroxide on standard tea-stained cotton test cloths. The experiments were carried out at a pH of 7 in a glass beaker in a solution of hydrogen peroxide and the Fe-catalyst. See page 17, lines 18-25. Note that, the Examiner maintains that the complex taught by '787 would inherently catalyse bleaching of the stains by atmospheric oxygen because '787 teaches the same bleach catalyst complex as recited by the instant claims. Note that, "substantially devoid" as recited by instant claims 1, 13, 17 and 18 allows for large amounts of a bleaching agent as outlined in the instant specification.

'074 teaches a process for cleaning of a substrate comprising the steps of adding a molecular oxygen activating system to an aqueous wash liquor, containing a sufficient amount of molecular oxygen for obtaining observable cleaning, and cleaning the substrate with the wash liquor. See Abstract. The composition may be used for cleaning fabrics. See page 3, lines 30-40. Transition metal bleach catalysts may also be added to the composition. See page 6, lines 15-25. Surfactants and builders may also be added to the composition. See page 11, line 10 to page 12, line 35.

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Specifically, '074 teaches the use of manganese and iron catalysts wherein air was bubbled through a 250 ml solution containing the catalysts to bleach test cloths. The pH of the solution is 10. See page 17, lines 20-30.

Note that, with respect to instant claims 9-12, the Examiner asserts that these are product-by-process claims and that if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fec. Cir. 1985). See MPEP 2113.

Accordingly, the broad teachings of '628 or '787 appear to anticipate the material limitations of the instant claims.

10. Claims 5, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 95/34628, WO 97/48787, WO 97/38074.

'628 or '787 are relied upon as set forth above. However, '628 or '787 do not specifically teach a bleaching composition having the specific pH containing a surfactant and builder in addition to the other requisite components of the composition as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a bleaching composition having the specific pH containing a surfactant and builder in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '628 or '787

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suggest a bleaching composition having the specific pH containing a surfactant and builder in addition to the other requisite components of the composition as recited by the instant claims.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

a timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. a terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 13-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,245,115. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-16 of US 6,245,115 encompass the material limitations of the instant claims.

13. Claims 1-12 and 19-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,242,409.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-6 of US 6,242,409 encompass the material limitations of the instant claims.

14. Claims 13-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the pending claims of copending

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Application No. 09/649668. Although the conflicting claims are not identical, they are not patentably distinct from each other because the pending claims of 09/649668 encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

15. Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of copending Application No. 09/540598, claims 1-35 of 09/650135, claims 1-22 of 09/796141, claims 1-16 of 09/795810, claims 1-51 of 09/539756, claims 1-18 of 09/796210, and claims 1-35 of 09/649667. Although the conflicting claims are not identical, they are not patentably distinct from each other because these claims encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

16. Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the pending claims of copending Application No. 09/796210. Although the conflicting claims are not identical, they are not patentably distinct from each other because the pending claims of 09/796210 encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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17. Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the pending claims of copending Application No. 09/741392, 09/741393, 09/741394, and 09/741395. Although the conflicting claims are not identical, they are not patentably distinct from each other because the pending claims of No. 09/741392, 09/741393, 09/741394, and 09/741395 encompass the material limitations of the instant claims. .

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

19. Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Monday thru Friday from 9:30AM to 6:00 PM.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

GRD
June 14, 2001

GREGORY DELCOTTO
PRIMARY EXAMINER

